



STATE OF MONTANA DEPARTMENT OF REVENUE JOB PROFILE

Working Title
Senior Tax Counsel

Job Code Title
Lawyer

Pay Band
8a/8b

Job Code Number
231118

Director's Office
Legal Services Office
Litigation Unit

Fair Labor Standards Act
Exempt

The Montana Department of Revenue administers more than 30 state taxes and fees; establishes values for taxable property, including agricultural land, residential real estate, commercial real estate, forest land, business equipment, railroads and public utilities; supervises the operation of the state liquor stores and agencies and administers the laws governing the sale, taxation, and licensing of alcoholic beverages; and returns unclaimed property to its rightful owners.

The Director's Office supports the agency's Director and is composed of five work units: Legal Services Office; Office of Tax Policy and Research; Office of Human Resources and Organizational Development; Office of Taxpayer Assistance; and the Executive Office. The Legal Services Office provides complete legal services to all divisions and the director's Office, representing the department and the State of Montana before administrative boards and in state and federal courts in all litigation involving Montana taxes and liquor laws. The office also handles all administrative rule, disclosure, and dispute resolution matters for the department. The Legal Services Office is comprised of the Litigation Unit, the Regulatory Unit, and the Office of Dispute Resolution.

Job Responsibilities

The Senior Tax Counsel handles the most complex, legally and financially significant, and diverse cases in the department. Senior lawyers must be able to handle the most difficult and important cases without assistance. The cases typically require extensive investigation, research, and preparation. The incumbent will either act as sole representative or may serve as lead counsel. The majority of cases are before Montana District Courts, the Montana Supreme Court, and the Montana State Tax Appeal Board. However, cases may also be before federal appellate courts such as the Ninth Circuit Court of Appeals and the U.S. Supreme Court. The incumbent is relied upon by the Chief Legal Counsel as an expert on litigation matters and on legal matters affecting a wide variety of agency policies and activities including general tax policy. The position reports to the Chief Legal Counsel and does not supervise other staff.

• **Case Development and Presentation 75%**

Determines general and specific trial strategy and tactics, which witnesses and evidence are used or not used in presenting the case, and which legal arguments are used or not used in the case. The senior tax counsel must rely upon extensive litigation experience to make these independent, critical decisions that can determine the final outcome of the case.

1. Analyzes and evaluates facts and information from case files to gain understanding of each case, evaluate the strength of the state's legal position, and develop cases. Coordinates and oversees paralegals. Conducts follow-up factual investigation such as interviews and gathering additional documentary evidence as necessary.

2. Plans, schedules, and manages oral depositions and effectively uses all other discovery tools including requests for admission, interrogatories, and requests for production. Interviews all of the department's technical and expert witnesses, selects and interviews technical and expert witnesses from outside the agency, and evaluates witness testimony.
3. Plans and manages documentary and other evidence to ensure compliance with federal and state laws, rules, and regulations. Selects, interviews, and prepares technical and expert witnesses.
4. Conducts or oversees mediations and settlement conferences to negotiate resolutions to legal disputes. Independently evaluates the department's prospects for success and the potential impact of success or failure on future tax collections and tax administration in Montana to determine a course of action. Coordinates the interests and efforts of numerous jurisdictional entities and parties including state, county, city, school districts, and multi-state corporations.
5. Prepares pleadings. Conducts legal research. Drafts motions, responsive pleadings, briefs, and other written presentations. Develops case analyses and evaluation memoranda for clients. Prepares case-related correspondence. Prepares settlement memos and brochures. Reviews the record from district court and drafts the state's brief on appeal to the Montana Supreme Court. These pleadings often are complex due to the novelty of the cases, the lack of clearly defined or applicable precedents, ambiguity in the statutes, or of conflicting precedents.
6. Appears and argues pre-trial motions. Presents the case to the court or jury including voir dire, opening statements, questioning of lay and expert witnesses, cross-examination of witnesses, closing arguments, submittal of jury instructions, and final jury arguments.
7. Appears and argues in the Montana Supreme Court in cases set for oral argument. Ensures clear, concise, polite, and persuasive presentations and responses to questions from the Court. Presents or oversees the presentation of the department's case in the actual trial of the cause of action. Examines all friendly witnesses and cross-examines opposing witnesses.
8. Advises and consults with director, deputy director, division administrators, and chief legal counsel on appellate strategy. Prepares appeals, briefs to support appeals, response briefs, and briefs defending the department when opposing parties file appeals. Determines the best legal arguments, writes complex arguments in simple and concise language, and orally argues cases before appellate courts. The lawyer must be able to effectively explain and argue, in simple terms, very complex legal issues during oral arguments.

- **Client Counseling and Advocacy 10%**

Advises agency clients on legal matters relating to diverse subjects, including but not limited to student loan defaults, election law and campaign practices, environmental quality laws, petroleum tank releases, contracts, personnel matters, ethics, open meetings, and other open government laws.

1. Conducts legal research and drafts legal memoranda and reports for issuance as opinions to client agencies. Drafts administrative rules, regulations, legislation, and related documents such as fact sheets. The research will include all legal issues affecting the department including tax law, administrative law and procedure, and alcohol and tobacco law.
2. Analyzes, evaluates, and interprets tax laws and other statutes affecting the agency and issues written opinions on these laws. These include complex laws that may have no prior interpretations of the law or applicable precedents for interpretation.
3. Provides legal advice and guidance to the director, deputy director, and division administrators on complex and technical taxation issues; chief legal counsel and director on litigation strategy; and other agency staff on issues related to personnel, contracts, and other legal issues as directed by the chief legal counsel.
4. Provides regular and consistent legal advice to client agencies on various legal issues. This may involve specialized research and analysis of statutory and case law as well as evaluation of legal trends and judicial policies to provide sound legal counsel.
5. Presents oral testimony in favor of proposed legislation or administrative rules. May appear and argue motions in federal and state district courts. May try cases with relatively lower levels of complexity or potential exposure and assist with trial of more complex or higher exposure cases.

- **Administrative Rule and Statutory Analysis 10%**

1. Reviews proposed administrative rules to determine consistency with legislative intent, proper implementation of statutes, and statutory authority to adopt the proposed regulations.
2. Consults with director, division administrators, and chief legal counsel regarding need for and basic purpose of administrative rules.
3. Represents the department at rules hearings.
4. Reviews the final department action on the rules to insure compliance with the Montana Administrative Procedure Act (MAPA).
5. Drafts legislation upon request of chief legal counsel and/or the director, deputy director, and division administrators.
6. Reviews proposed legislation drafted by department personnel and legislators. Recommends and drafts amendments to proposed legislation.
7. Appears before legislative standing and interim committees to explain and clarify proposed legislation when requested.
8. Alerts the chief legal counsel and/or director, deputy director, and division administrators to problems with existing laws and proposes possible changes.

- **Other Duties as Assigned 5%**

1. Performs a variety of other duties as assigned by the supervisor.

Job Requirements

To perform successfully as a senior tax counsel, the incumbent must be self-motivated; possess a strong work ethic; maintain a positive attitude; and enjoy working with, and for, the public. It is essential that the incumbent has the ability to analyze situations and make decisions. Skills in legal research, methods, and strategy; multi-tasking; paying attention to details and accuracy; managing multiple priorities under tight deadlines; communicating effectively through writing, public speaking and editing; and word processing, spreadsheet, and database applications are required. The incumbent is required to conduct analyses and foresee potential problems; determining the best course of action; analyze complex issues; identify others' underlying concerns and motives; negotiate; deal with controversy and hostility in a professional and objective manner; and establish effective relationships with others. This position works with highly confidential financial and tax information and is required to maintain the highest level of confidentiality regarding all information acquired or used in performing this job.

This position requires knowledge of Montana tax law and tax cases; court and hearing rules and procedures including the Federal Rules of Civil Procedure, the Montana Rules of Civil Procedure, the Rules of Appellate procedure, the Rules of Evidence, the Uniform District Court Rules and the Montana Administrative Procedure Act; court rules and trial procedures; judicial processes and procedures relative to administrative hearings and state and federal courts; bill drafting and legislation; civil litigation techniques and trial strategies; appellate court argument procedures and techniques; the Constitutions of Montana and the United States; and legal research methods and procedures. The position also requires knowledge of state and federal laws, case law, court rulings, constitutional provisions, and basic principles, practices, and terminology relative to the assigned areas and working knowledge of the operations of state government and administrative procedures.

- The minimum level of education and job-related work experience needed as a new employee **on the first day** of work is completion of a juris doctorate degree from an accredited law school and six years of job-related work experience. Must be licensed to practice law in the state of Montana.
- Work experience should be made up of increasingly responsible legal practice providing an intimate knowledge of the actual practice of law and litigation especially in the area of tax law.
- Advanced legal courses in the area of state and local taxation and administrative law and training in trial techniques are preferred.
- Other combinations of education and experience will be evaluated on an individual basis.

Department Core Values

- **Respect:** As a representative of the people of Montana, proceeds with the highest level of respect for the dignity of every person contacted through work. Without exception, all people are treated as equally as possible. The employee is a faithful steward of the resources provided to this agency by the citizens of Montana.
- **Integrity:** Conducts work honestly and makes decisions that establish a clear record that the department serves the public with integrity. Apologizes for mistakes and gives credit to others for their cooperation, work, and ideas in achieving positive results. Accountable for their actions and holds others accountable for theirs. Decisions and judgments achieve equity and justice for all parties involved including citizens and co-workers.
- **Productivity:** Consistently strives to minimize the waste of the department's financial, facilities, and human resources. Diligently works to improve the productivity and effectiveness of the work unit. Welcomes and encourages new ideas on improving the results of the department from the public, other officials, colleagues, and supervisors. Approaches work in a manner that builds goodwill, trust, and cooperation internally with other staff and externally with the public.
- **Teamwork:** Maximizes cooperation and teamwork when working with other employees, divisions, and other state agencies. Willing to work with others for the opportunity to learn from their ideas, talents, and knowledge. Seeks to resolve conflicts with other employees and work units in an open and respectful manner that reinforces teamwork. Celebrates the successes of others.

Working Conditions

This position has considerable mental stress and pressure due to issues, workload, critical deadlines, time constraints, controversial or adversarial situations, conflicting priorities, technical nature of the work, significance of decisions made, and challenging nature of contacts. As a Department of Revenue employee, the incumbent may come into contact with highly confidential financial and tax information and is required to maintain the highest level of confidentiality regarding all information acquired or used in performing this job. Work hours routinely exceed 40 hours per week. Travel is required some of which will be out-of-state. Requires a valid Montana driver's license. This position requires considerable computer and keyboard use. The incumbent may spend considerable time on the phone. Lifting is infrequent, less than 15 pounds and includes carrying light items such as papers and books. This job requires regular attendance as scheduled by the supervisor. This job cannot be performed at an alternate work site.

Special requirements

- **Background Examination:** Applicants for this position will be subject to a criminal background review before being considered for employment. Individual circumstances involving a criminal conviction will be reviewed to determine an applicant's eligibility for employment.
- **Compliance with All Appropriate Montana Tax Laws:** An employee's tax status must be current.

This job profile was produced by the Office of Human Resources in conjunction with the appropriate managers.

Division Administrator Review: The statements in this job profile are accurate and complete.

Signature: C.A. Daw, Chief Legal Counsel Date: August 2010

Human Resource Director Review: The Office of Human Resources has reviewed this job profile.

Signature: JeanAnn Scheuer, Human Resources Director Date: August 2010

Employee: My signature below indicates I have read this job profile and discussed it with my supervisor.

Signature: _____ Date: _____

Name (print): _____